

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

In re: NEXIUM (ESOMEPRAZOLE)  
ANTITRUST LITIGATION

MDL No. 2409

Civil Action No. 1:12-md-02409-WGY

This Document Relates To:

All Actions

**PLANTIFFS' OMNIBUS MOTION *IN LIMINE***

In light of opening statements next week, Plaintiffs<sup>1</sup> respectfully request that the Court grant the following relief to shape the proper scope of opening statements and the evidence.

**Motion *in Limine* A: Motion to Bar Any Reference to the Adverse Impact That a Damages Award Will Have on Defendants or the Drug Industry**

For the reasons set forth in the accompanying memorandum of law in support of this omnibus motion, Plaintiffs request that the Court preclude Defendants<sup>2</sup> from presenting any evidence or argument at trial that a large judgment against them will negatively impact their current businesses and/or other drug manufacturers in the future. Plaintiffs also request that the Court preclude Defendants from arguing or suggesting that they will need to adjust the prices they charge for Nexium and/or other products in the event of an adverse verdict.

**Motion *in Limine* B: Motion to Exclude Any Evidence Regarding Past or Present Litigation Involving Plaintiffs or Their Counsel**

For the reasons set forth in the accompanying memorandum of law in support of this omnibus motion, Plaintiffs request that the Court preclude Defendants from referring to or

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<sup>1</sup> Plaintiffs include the Direct Purchaser Class Plaintiffs, the End Payor Class Plaintiffs, and Plaintiffs in the *Walgreen* (No. 13-cv-10337-WGY), *Giant Eagle* (No. 13-cv-11305-WGY), *Rite Aid* (No. 13-cv-12074-WGY), and *CVS* (14-cv-11788) actions.

<sup>2</sup> “Defendants” are AstraZeneca LP, AstraZeneca AB and Aktiebolaget Hassle, Ranbaxy Pharmaceuticals, Inc., Ranbaxy Inc. and Ranbaxy Laboratories Ltd., Teva Pharmaceutical Industries, Ltd. and Teva USA, Inc., and Dr. Reddy’s Laboratories Ltd. and Dr. Reddy’s Laboratories, Inc.

presenting evidence regarding any current or past litigation involving Plaintiffs or their counsel, or suggesting any inappropriate role by Plaintiffs' counsel in the instant case.

**Motion in Limine C: Motion to Preclude Defendant AstraZeneca from Disparaging Generic Drugs or Touting Brand Drugs**

For the reasons set forth in the accompanying memorandum of law in support of this omnibus motion, Plaintiffs request that Defendants AstraZeneca LP, AstraZeneca AB and Aktiebolaget Hassle ("AstraZeneca") be precluded from introducing evidence or argument, through attorneys or witnesses, denigrating generic drugs with pejoratives such as "copycat" or "me too" drugs. Plaintiffs also request that AstraZeneca be precluded from referring to itself with self-serving descriptors such as "innovator."

**Motion in Limine D: Motion to Exclude Evidence or Opinions That a Payment Must Be in Cash**

For the reasons set forth in the accompanying memorandum of law in support of this omnibus motion, Plaintiffs request that the Court preclude Defendants from presenting any evidence and/or opinion that a reverse payment under *Actavis* must be in cash.

**Motion in Limine E: Motion to Exclude Evidence or Opinions That Authorized Generics Are Anticompetitive**

For the reasons set forth in the accompanying memorandum of law in support of this omnibus motion, Plaintiffs request that the Court preclude Defendants from presenting any evidence that authorized generics themselves harm competition or are anticompetitive. Plaintiffs also request that the Court preclude Defendants from introducing any evidence that AstraZeneca's agreement not to launch an authorized generic was in any way procompetitive.

**Motion in Limine F: Motion to Exclude Live Testimony of Defendants' Witnesses Who Are Unavailable to Testify in Plaintiffs' Case in Chief**

For the reasons set forth in the accompanying memorandum of law in support of this omnibus motion, Plaintiffs request that the Court exclude the live testimony of witnesses set

forth on Defendants' witness list who are not made available to testify live in Plaintiffs' case in chief.

**Motion in Limine G: Motion to Exclude Any Reference That the New Jersey District Court in Any Way "Approved" the Patent Litigation Settlements**

For the reasons set forth in the accompanying memorandum of law in support of this omnibus motion, Plaintiffs request that the Court preclude Defendants from offering evidence or argument that the New Jersey District Court's entry of the consent judgments ("Consents") manifests actual court-approval of the patent litigation settlement agreements.

**Motion in Limine H: Motion Requesting That the Court Preclude Assertion of Any "Risk Aversion" Defense**

For the reasons set forth in the accompanying memorandum of law in support of this omnibus motion, Plaintiffs request that the Court preclude Defendants from arguing, suggesting, mentioning, or presenting any evidence regarding any "risk aversion" defense, *i.e.*, evidence, argument, or suggestion that AstraZeneca's aversion to litigation risk, the risk from competition, and/or business uncertainty justified the payment to delay generic entry.

**Motion in Limine I: Motion Requesting that the Court Preclude Evidence Related to the FTC Investigation, and Requesting a Limiting Instruction to the Jury to Prevent Conclusions and/or Inferences to be Drawn from the FTC Investigation**

For the reasons set forth in the accompanying memorandum of law in support of this omnibus motion, Plaintiffs request that the Court preclude Defendants from introducing evidence related to the legally irrelevant fact of the FTC investigation of the Defendants' settlements and the outcome of this investigation, and request a limiting instruction to prevent the jury from drawing any conclusions and/or inferences from this same evidence.

**Motion in Limine J: Motion Requesting that the Court Preclude Evidence Related to Defendants' Supposed Good Character or Reputation**

For the reasons set forth in the accompanying memorandum of law in support of this omnibus motion, Plaintiffs respectfully request that this Court prohibit Defendants from mentioning or introducing evidence at trial related to Defendants' supposed good character or reputation.

**Motion in Limine K: Motion Requesting that the Court Preclude Evidence that the Sales of Nexium (a) Allowed AstraZeneca to Recoup Research and Development Costs Incurred in the Development of Nexium, and (b) Generated Profits That Were Used to Develop or Discover New Pharmaceutical Products, or That Were Used to Benefit the Public or Company**

For the reasons set forth in the accompanying memorandum of law in support of this omnibus motion, Plaintiffs respectfully request that this Court prohibit AstraZeneca from offering evidence or argument that suppression of generic competition to Nexium was in any way beneficial or procompetitive because it, *inter alia*, (a) permitted AstraZeneca to recoup research and development expenses, or (b) generated profits which were used to develop or discover new drugs, or which otherwise benefitted AstraZeneca or the public.

**LOCAL RULE 7.1(a)(2) CERTIFICATION**

Plaintiffs made a good faith attempt to resolve the issues in this motion by asking Defendants whether they consented to this motion, and Defendants did not respond as of this filing.

Dated: October 14, 2014

**/s/ Thomas M. Sobol**

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**CERTIFICATE OF SERVICE**

I, Thomas M. Sobol, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: October 14 , 2014

**/s/ Thomas M. Sobol**  
Thomas M. Sobol